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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON**

JEREMY OLSEN,)
Plaintiff,)
v.)
NORRIS COCHRAN, in his official) Case No. 2:20-cv-374 (SMJ)
capacity as Acting Secretary of)
Health and Human Services,)
Defendant.)

INTRODUCTION

2 The Defendant, Norris Cochran,¹ Acting Secretary of Health and Human
3 Services (the “Secretary”), respectfully answers the allegations of the Corrected
4 Complaint, ECF No. 3-1, as follows. The Secretary notes that, pursuant to 42
5 U.S.C. § 1395ff(b)(1)(A), the Court’s review in this action is based solely on the

¹ Acting Secretary Cochran is automatically substituted as Defendant by operation of Federal Rule of Civil Procedure 25(d).

1 administrative record, rather than the allegations of the parties in their respective
2 pleadings.

3 1. This paragraph consists of Plaintiff's legal conclusions and
4 characterization of this lawsuit, to which no response is required.

5 2. This paragraph consists of Plaintiff's legal conclusions regarding
6 subject-matter jurisdiction, to which no response is required.

7 3. This paragraph consists of Plaintiff's legal conclusions regarding
8 venue, to which no response is required.

9 4. Admitted.

10 5. Admitted that Alex M. Azar II was the Secretary of Health and
11 Human Services when the Corrected Complaint was filed. The remainder of this
12 paragraph consists of Plaintiff's characterization of this lawsuit, to which no
13 response is required.

14 6. This paragraph consists of factual allegations regarding diabetes.
15 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based
16 solely on the administrative record, rather than the allegations of the parties in their
17 respective pleadings; Defendant thus respectfully refers the Court to the
18 administrative record for a full and accurate statement of its contents. To the
19 extent that these allegations are not reflected in the administrative record, they are
20 beyond the scope of the Court's review in this case, and no response is required.

1 7. This paragraph consists of factual allegations regarding diabetes.

2 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based
3 solely on the administrative record, rather than the allegations of the parties in their
4 respective pleadings; Defendant thus respectfully refers the Court to the
5 administrative record for a full and accurate statement of its contents. To the
6 extent that these allegations are not reflected in the administrative record, they are
7 beyond the scope of the Court's review in this case, and no response is required.

8 8. This paragraph consists of factual allegations regarding diabetes.

9 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based
10 solely on the administrative record, rather than the allegations of the parties in their
11 respective pleadings; Defendant thus respectfully refers the Court to the
12 administrative record for a full and accurate statement of its contents. To the
13 extent that these allegations are not reflected in the administrative record, they are
14 beyond the scope of the Court's review in this case, and no response is required.

15 9. This paragraph consists of factual allegations regarding diabetes.

16 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based
17 solely on the administrative record, rather than the allegations of the parties in their
18 respective pleadings; Defendant thus respectfully refers the Court to the
19 administrative record for a full and accurate statement of its contents. To the

1 extent that these allegations are not reflected in the administrative record, they are
2 beyond the scope of the Court's review in this case, and no response is required.

3 10. This paragraph consists of factual allegations regarding diabetes.

4 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based
5 solely on the administrative record, rather than the allegations of the parties in their
6 respective pleadings; Defendant thus respectfully refers the Court to the
7 administrative record for a full and accurate statement of its contents. To the
8 extent that these allegations are not reflected in the administrative record, they are
9 beyond the scope of the Court's review in this case, and no response is required.

10 11. This paragraph consists of factual allegations regarding diabetes.

11 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based
12 solely on the administrative record, rather than the allegations of the parties in their
13 respective pleadings; Defendant thus respectfully refers the Court to the
14 administrative record for a full and accurate statement of its contents. To the
15 extent that these allegations are not reflected in the administrative record, they are
16 beyond the scope of the Court's review in this case, and no response is required.

17 12. This paragraph consists of factual allegations regarding glucose tests.

18 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based
19 solely on the administrative record, rather than the allegations of the parties in their
20 respective pleadings; Defendant thus respectfully refers the Court to the

1 administrative record for a full and accurate statement of its contents. To the
2 extent that these allegations are not reflected in the administrative record, they are
3 beyond the scope of the Court's review in this case, and no response is required.

4 13. This paragraph consists of factual allegations regarding glucose tests.
5 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based
6 solely on the administrative record, rather than the allegations of the parties in their
7 respective pleadings; Defendant thus respectfully refers the Court to the
8 administrative record for a full and accurate statement of its contents. To the
9 extent that these allegations are not reflected in the administrative record, they are
10 beyond the scope of the Court's review in this case, and no response is required.

11 14. This paragraph consists of factual allegations regarding continuous
12 glucose monitors. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in
13 this action is based solely on the administrative record, rather than the allegations
14 of the parties in their respective pleadings; Defendant thus respectfully refers the
15 Court to the administrative record for a full and accurate statement of its contents.
16 To the extent that these allegations are not reflected in the administrative record,
17 they are beyond the scope of the Court's review in this case, and no response is
18 required.

19 15. This paragraph consists of factual allegations regarding continuous
20 glucose monitors. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in

1 this action is based solely on the administrative record, rather than the allegations
2 of the parties in their respective pleadings; Defendant thus respectfully refers the
3 Court to the administrative record for a full and accurate statement of its contents.
4 To the extent that these allegations are not reflected in the administrative record,
5 they are beyond the scope of the Court's review in this case, and no response is
6 required.

7 16. This paragraph consists of a factual allegation regarding continuous
8 glucose monitors. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in
9 this action is based solely on the administrative record, rather than the allegations
10 of the parties in their respective pleadings; Defendant thus respectfully refers the
11 Court to the administrative record for a full and accurate statement of its contents.
12 To the extent that this allegation is not reflected in the administrative record, it is
13 beyond the scope of the Court's review in this case, and no response is required.

14 17. This paragraph consists of factual allegations regarding continuous
15 glucose monitors. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in
16 this action is based solely on the administrative record, rather than the allegations
17 of the parties in their respective pleadings; Defendant thus respectfully refers the
18 Court to the administrative record for a full and accurate statement of its contents.
19 To the extent that these allegations are not reflected in the administrative record,

1 they are beyond the scope of the Court's review in this case, and no response is
2 required.

3 18. This paragraph consists of factual allegations regarding continuous
4 glucose monitors. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in
5 this action is based solely on the administrative record, rather than the allegations
6 of the parties in their respective pleadings; Defendant thus respectfully refers the
7 Court to the administrative record for a full and accurate statement of its contents.
8 To the extent that these allegations are not reflected in the administrative record,
9 they are beyond the scope of the Court's review in this case, and no response is
10 required.

11 19. This paragraph consists of factual allegations regarding continuous
12 glucose monitors. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in
13 this action is based solely on the administrative record, rather than the allegations
14 of the parties in their respective pleadings; Defendant thus respectfully refers the
15 Court to the administrative record for a full and accurate statement of its contents.
16 To the extent that these allegations are not reflected in the administrative record,
17 they are beyond the scope of the Court's review in this case, and no response is
18 required.

19 20. This paragraph consists of factual allegations regarding continuous
20 glucose monitors. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in

1 this action is based solely on the administrative record, rather than the allegations
2 of the parties in their respective pleadings; Defendant thus respectfully refers the
3 Court to the administrative record for a full and accurate statement of its contents.
4 To the extent that these allegations are not reflected in the administrative record,
5 they are beyond the scope of the Court's review in this case, and no response is
6 required.

7 21. This paragraph consists of factual allegations regarding continuous
8 glucose monitors. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in
9 this action is based solely on the administrative record, rather than the allegations
10 of the parties in their respective pleadings; Defendant thus respectfully refers the
11 Court to the administrative record for a full and accurate statement of its contents.
12 To the extent that these allegations are not reflected in the administrative record,
13 they are beyond the scope of the Court's review in this case, and no response is
14 required.

15 22. This paragraph consists of factual allegations regarding continuous
16 glucose monitors. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in
17 this action is based solely on the administrative record, rather than the allegations
18 of the parties in their respective pleadings; Defendant thus respectfully refers the
19 Court to the administrative record for a full and accurate statement of its contents.
20 To the extent that these allegations are not reflected in the administrative record,

1 they are beyond the scope of the Court's review in this case, and no response is
2 required.

3 23. This paragraph consists of factual allegations regarding continuous
4 glucose monitors. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in
5 this action is based solely on the administrative record, rather than the allegations
6 of the parties in their respective pleadings; Defendant thus respectfully refers the
7 Court to the administrative record for a full and accurate statement of its contents.
8 To the extent that these allegations are not reflected in the administrative record,
9 they are beyond the scope of the Court's review in this case, and no response is
10 required.

11 24. This paragraph consists of plaintiff's characterizations and legal
12 conclusions regarding the treatment of continuous glucose monitors under
13 Medicare Part B, to which no response is required.

14 25. This paragraph consists of plaintiff's characterizations and legal
15 conclusions regarding Medicare Part B, to which no response is required. The
16 Court is respectfully referred to the cited statutory provision for a full and complete
17 statement of its contents.

18 26. This paragraph consists of plaintiff's characterizations and legal
19 conclusions regarding the Secretary's regulations, to which no response is

1 required. The Court is respectfully referred to the cited regulatory provision for a
2 full and complete statement of its contents.

3 27. This paragraph consists of a block quotation of a statutory provision,
4 to which no response is required. The Court is respectfully referred to the cited
5 statutory provision for a full and complete statement of its contents.

6 28. This paragraph consists of plaintiff's characterizations and legal
7 conclusions regarding a statutory provision, to which no response is required. The
8 Court is respectfully referred to the cited statutory provision for a full and complete
9 statement of its contents.

10 29. Defendant admits that CMS Ruling 1682-R was issued on January 12,
11 2017. The remainder of this paragraph consists of plaintiff's characterizations and
12 legal conclusions regarding CMS Ruling 1682-R, to which no response is required.
13 The Court is respectfully referred to the cited CMS Ruling for a full and complete
14 statement of its contents.

15 30. This paragraph consists of plaintiff's quotation from CMS Ruling
16 1682-R, to which no response is required. The Court is respectfully referred to the
17 cited CMS Ruling for a full and complete statement of its contents.

18 31. This paragraph consists of plaintiff's characterizations and legal
19 conclusions regarding CMS Ruling 1682-R, to which no response is required. The

1 Court is respectfully referred to the cited CMS Ruling for a full and complete
2 statement of its contents.

3 32. This paragraph consists of plaintiff's characterizations and legal
4 conclusions regarding CMS Ruling 1682-R, to which no response is required. The
5 Court is respectfully referred to the cited CMS Ruling for a full and complete
6 statement of its contents.

7 33. This paragraph consists of plaintiff's characterizations and legal
8 conclusions regarding CMS Ruling 1682-R, to which no response is required. The
9 Court is respectfully referred to the cited CMS Ruling for a full and complete
10 statement of its contents.

11 34. This paragraph consists of plaintiff's characterizations and legal
12 conclusions regarding the treatment of continuous glucose monitors under
13 Medicare Part B, to which no response is required.

14 35. This paragraph consists of plaintiff's characterizations and legal
15 conclusions regarding CMS Ruling 1682-R, to which no response is required. The
16 Court is respectfully referred to the cited CMS Ruling for a full and complete
17 statement of its contents.

18 36. This paragraph consists of plaintiff's characterizations and legal
19 conclusions regarding LCD L33822 and Policy Article A52464, to which no

1 response is required. The Court is respectfully referred to the cited local coverage
2 determination and policy article for a full and complete statement of their contents.

3 37. This paragraph consists of plaintiff's characterizations and legal
4 conclusions regarding CMS Ruling 1682-R, to which no response is required. The
5 Court is respectfully referred to the cited CMS Ruling for a full and complete
6 statement of its contents.

7 38. This paragraph consists of plaintiff's characterizations and legal
8 conclusions regarding National Coverage Determination 280.1, among other
9 things. No response is required. The Court is respectfully referred to the cited
10 national coverage determination for a full and complete statement of its contents.

11 39. This paragraph consists of plaintiff's characterizations and legal
12 conclusions regarding Local Coverage Determination L33822 and Policy Article
13 A52464, among other things. No response is required. The Court is respectfully
14 referred to the cited local coverage determination and policy article for a full and
15 complete statement of their contents.

16 40. Admitted that several district courts have reviewed Medicare Part B
17 coverage determinations for continuous glucose monitors.

18 41. This paragraph consists of plaintiff's characterizations and legal
19 conclusions regarding several district court decisions, to which no response is

1 required. The Court is respectfully referred to those district court decisions for a
2 full and complete statement of their contents.

3 42. This paragraph consists of plaintiff's characterizations and legal
4 conclusions regarding several district court decisions, to which no response is
5 required. The Court is respectfully referred to those district court decisions for a
6 full and complete statement of their contents.

7 43. This paragraph consists of plaintiff's characterizations and legal
8 conclusions regarding the district court's decision in *Whitcomb v. Azar*, to which
9 no response is required. The Court is respectfully referred to that decision for a
10 full and complete statement of its contents.

11 44. This paragraph consists of plaintiff's characterizations and legal
12 conclusions regarding several district court decisions, to which no response is
13 required. The Court is respectfully referred to those district court decisions for a
14 full and complete statement of their contents.

15 45. This paragraph consists of plaintiff's characterizations and legal
16 conclusions regarding a decision of the Departmental Appeals Board, to which no
17 response is required. The Court is respectfully referred to the cited decision for a
18 full and complete statement of its contents.

19 46. This paragraph consists of factual allegations regarding Plaintiff.
20 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based

1 solely on the administrative record, rather than the allegations of the parties in their
2 respective pleadings; Defendant thus respectfully refers the Court to the
3 administrative record for a full and accurate statement of its contents. To the
4 extent that these allegations are not reflected in the administrative record, they are
5 beyond the scope of the Court's review in this case, and no response is required.

6 47. This paragraph consists of factual allegations regarding Plaintiff.
7 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based
8 solely on the administrative record, rather than the allegations of the parties in their
9 respective pleadings; Defendant thus respectfully refers the Court to the
10 administrative record for a full and accurate statement of its contents. To the
11 extent that these allegations are not reflected in the administrative record, they are
12 beyond the scope of the Court's review in this case, and no response is required.

13 48. This paragraph consists of factual allegations regarding Plaintiff.
14 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based
15 solely on the administrative record, rather than the allegations of the parties in their
16 respective pleadings; Defendant thus respectfully refers the Court to the
17 administrative record for a full and accurate statement of its contents. To the
18 extent that these allegations are not reflected in the administrative record, they are
19 beyond the scope of the Court's review in this case, and no response is required.

1 49. This paragraph consists of factual allegations regarding Plaintiff.

2 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based
3 solely on the administrative record, rather than the allegations of the parties in their
4 respective pleadings; Defendant thus respectfully refers the Court to the
5 administrative record for a full and accurate statement of its contents. To the
6 extent that these allegations are not reflected in the administrative record, they are
7 beyond the scope of the Court's review in this case, and no response is required.

8 50. This paragraph consists of factual allegations regarding Plaintiff.

9 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based
10 solely on the administrative record, rather than the allegations of the parties in their
11 respective pleadings; Defendant thus respectfully refers the Court to the
12 administrative record for a full and accurate statement of its contents. To the
13 extent that these allegations are not reflected in the administrative record, they are
14 beyond the scope of the Court's review in this case, and no response is required.

15 51. This paragraph consists of factual allegations regarding Plaintiff and

16 his continuous glucose monitor. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the
17 Court's review in this action is based solely on the administrative record, rather
18 than the allegations of the parties in their respective pleadings; Defendant thus
19 respectfully refers the Court to the administrative record for a full and accurate
20 statement of its contents. To the extent that these allegations are not reflected in

1 the administrative record, they are beyond the scope of the Court's review in this
2 case, and no response is required.

3 52. This paragraph consists of allegations regarding the coverage claim at
4 issue in this case. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in
5 this action is based solely on the administrative record, rather than the allegations
6 of the parties in their respective pleadings; Defendant thus respectfully refers the
7 Court to the administrative record for a full and accurate statement of its contents.
8 To the extent that these allegations are not reflected in the administrative record,
9 they are beyond the scope of the Court's review in this case, and no response is
10 required.

11 53. This paragraph consists of allegations regarding the coverage claim at
12 issue in this case. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in
13 this action is based solely on the administrative record, rather than the allegations
14 of the parties in their respective pleadings; Defendant thus respectfully refers the
15 Court to the administrative record for a full and accurate statement of its contents.
16 To the extent that these allegations are not reflected in the administrative record,
17 they are beyond the scope of the Court's review in this case, and no response is
18 required.

19 54. Admitted that Plaintiff's claims for coverage were initially denied on
20 the listed date, and that he sought redetermination. The remainder of this

1 paragraph consists of Plaintiff's characterization of those initial denials, to which
2 no response is required. The Court is respectfully referred to the administrative
3 record for a full and accurate statement of their contents.

4 55. Admitted that Plaintiff's claims were denied on redetermination, on
5 the listed date, and that he sought reconsideration. The remainder of this paragraph
6 consists of Plaintiff's characterization of those redetermination decisions, to which
7 no response is required. The Court is respectfully referred to the administrative
8 record for a full and accurate statement of their contents.

9 56. Admitted that Plaintiff's claims were denied on reconsideration, on
10 the listed date, and that he sought review by an administrative law judge. The
11 remainder of this paragraph consists of Plaintiff's characterization of those
12 reconsideration decisions, to which no response is required. The Court is
13 respectfully referred to the administrative record for a full and accurate statement
14 of their contents.

15 57. Admitted that the administrative law judge conducted a hearing on the
16 listed date and issued a decision on Plaintiff's claims. The remainder of this
17 paragraph consists of Plaintiff's characterization of that ALJ decision, to which no
18 response is required. The Court is respectfully referred to the administrative record
19 for a full and accurate statement of its contents.

1 58. This paragraph consists of Plaintiff's characterization of filings before
2 the Medicare Appeals Council, to which no response is required. The Court is
3 respectfully referred to those filings for a full and complete statement of their
4 contents.

5 59. Admitted that the Medicare Appeals Council issued a decision on
6 Plaintiff's claims on the listed date. The remainder of this paragraph consists of
7 Plaintiff's characterization of that decision, to which no response is required. The
8 Court is respectfully referred to the administrative record for a full and accurate
9 statement of its contents.

10 60. Admitted.

11 61. In this paragraph, Plaintiff repeats the paragraphs set forth above. The
12 Secretary incorporates by reference his answers to all of the preceding paragraphs
13 as if fully set out herein.

14 62. This paragraph consists of a request for relief, to which no response is
15 required. To the extent that a response is deemed necessary, the Secretary denies
16 that Plaintiff is entitled to the requested relief or any relief whatsoever. The
17 Secretary notes that this claim was dismissed by the Court on January 12, 2021.

18 63. This paragraph consists of a request for relief, to which no response is
19 required. To the extent that a response is deemed necessary, the Secretary denies

1 that Plaintiff is entitled to the requested relief or any relief whatsoever. The
2 Secretary notes that this claim was dismissed by the Court on January 12, 2021.

3 64. In this paragraph, Plaintiff repeats the paragraphs set forth above. The
4 Secretary incorporates by reference his answers to all of the preceding paragraphs
5 as if fully set out herein.

6 65. This paragraph consists of a request for relief, to which no response is
7 required. To the extent that a response is deemed necessary, the Secretary denies
8 that Plaintiff is entitled to the requested relief or any relief whatsoever.

9 66. This paragraph consists of a request for relief, to which no response is
10 required. To the extent that a response is deemed necessary, the Secretary denies
11 that Plaintiff is entitled to the requested relief or any relief whatsoever.

12 67. In this paragraph, Plaintiff repeats the paragraphs set forth above. The
13 Secretary incorporates by reference his answers to all of the preceding paragraphs
14 as if fully set out herein.

15 68. This paragraph consists of a request for relief, to which no response is
16 required. To the extent that a response is deemed necessary, the Secretary denies
17 that Plaintiff is entitled to the requested relief or any relief whatsoever.

18 69. This paragraph consists of a request for relief, to which no response is
19 required. To the extent that a response is deemed necessary, the Secretary denies
20 that Plaintiff is entitled to the requested relief or any relief whatsoever.

1 70. In this paragraph, Plaintiff repeats the paragraphs set forth above. The
2 Secretary incorporates by reference his answers to all of the preceding paragraphs
3 as if fully set out herein.

4 71. This paragraph consists of a request for relief, to which no response is
5 required. To the extent that a response is deemed necessary, the Secretary denies
6 that Plaintiff is entitled to the requested relief or any relief whatsoever.

7 72. This paragraph consists of a request for relief, to which no response is
8 required. To the extent that a response is deemed necessary, the Secretary denies
9 that Plaintiff is entitled to the requested relief or any relief whatsoever.

10 73. In this paragraph, Plaintiff repeats the paragraphs set forth above. The
11 Secretary incorporates by reference his answers to all of the preceding paragraphs
12 as if fully set out herein.

13 74. This paragraph consists of a request for relief, to which no response is
14 required. To the extent that a response is deemed necessary, the Secretary denies
15 that Plaintiff is entitled to the requested relief or any relief whatsoever.

16 75. This paragraph consists of factual allegations regarding continuous
17 glucose monitors. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in
18 this action is based solely on the administrative record, rather than the allegations
19 of the parties in their respective pleadings; Defendant thus respectfully refers the
20 Court to the administrative record for a full and accurate statement of its contents.

1 To the extent that these allegations are not reflected in the administrative record,
2 they are beyond the scope of the Court's review in this case, and no response is
3 required.

4 76. This paragraph consists of a request for relief, to which no response is
5 required. To the extent that a response is deemed necessary, the Secretary denies
6 that Plaintiff is entitled to the requested relief or any relief whatsoever.

7 77. In this paragraph, Plaintiff repeats the paragraphs set forth above. The
8 Secretary incorporates by reference his answers to all of the preceding paragraphs
9 as if fully set out herein.

10 78. This paragraph consists of a request for relief, to which no response is
11 required. To the extent that a response is deemed necessary, the Secretary denies
12 that Plaintiff is entitled to the requested relief or any relief whatsoever.

13 79. This paragraph consists of a request for relief, to which no response is
14 required. To the extent that a response is deemed necessary, the Secretary denies
15 that Plaintiff is entitled to the requested relief or any relief whatsoever.

16 The remaining paragraphs of the complaint contain Plaintiff's requested
17 relief, to which no response is required. To the extent that a response is deemed
18 necessary, the Secretary denies that Plaintiff is entitled to the requested relief or
19 any relief whatsoever.

The Secretary denies any and all allegations of the complaint not expressly admitted herein.

DEFENSES

1. The Secretary's actions did not violate the Administrative Procedure Act, the Medicare statute, or any other statutory or regulatory provision.

2. Counts IV and VI were waived when they were not raised in the administrative process.

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

MICHELLE BENNETT
Assistant Director, Federal Programs Branch

/s/ James Bickford
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Counsel for Defendant

Date: January 26, 2021